

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 08-63119

SHIRLEY A. SMITH, *pro se*, and  
MARVIN G. SMITH, *pro se*,

Chapter 7

Judge Thomas J. Tucker

Debtors.

\_\_\_\_\_/

**ORDER DENYING DEBTORS' MOTION FOR REINSTATEMENT OF CASE  
AND CANCELLING HEARING ON THE MOTION**

This case is before the Court on a document Debtors filed on October 22, 2008 entitled "Motion to Reopen" (Docket # 20, the "Motion"), which seeks reinstatement of this bankruptcy case, and which this Court construes as a motion for reconsideration of, and for relief from, the Court's October 10, 2008 Order dismissing this case for the Debtors' failure to file documents (Docket # 15). The Motion is currently scheduled for hearing on November 10, 2008.

The Court has reviewed and considered the Motion, and concludes that the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

In addition, the Court notes that the allegations in the Motion do not establish any valid ground for relief from the order dismissing this case under Fed.R.Civ.P. 60(b).

Finally, the Court notes that even if Debtors might otherwise have a plausible argument for reinstatement, the Motion must be denied because Debtors are not eligible to be debtors in this case under 11 U.S.C. § 109(h)(1). That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing the petition by such individual, received from an approved

nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

The only certificates of credit counseling that Debtors filed with the Court state that Debtor Shirley Smith received “an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111” on October 7, 2008, and that Debtor Marvin Smith received “an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§ 109(h) and 111” on October 8, 2008. (*See* “Certificate[s] of Counseling,” filed on October 15, 2008 (Docket # 19).) Debtors filed their voluntary petition for relief in this case on September 23, 2008. Therefore, Debtors only received credit counseling *after* their petition was filed. With exceptions not applicable here, 11 U.S.C. § 109(h)(1) requires a debtor to obtain credit counseling *before* filing a bankruptcy petition.

Accordingly, for all of the above stated reasons,

IT IS ORDERED that the Motion (Docket # 20) is DENIED.<sup>1</sup>

IT IS FURTHER ORDERED that the November 10, 2008 hearing on the Motion is CANCELLED.

**Signed on October 30, 2008**

/s/ Thomas J. Tucker

**Thomas J. Tucker**  
**United States Bankruptcy Judge**

---

<sup>1</sup> This Order does not affect the new bankruptcy case that the Debtors filed on October 27, 2008, after the dismissal of this case. The new case is Case No. 08-66181, and remains pending.